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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,353	12/28/2001	Michael Tod Morman	KCC-16,291	8395

35844 7590 10/23/2003

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HOFFMAN ESTATES, IL 60195

EXAMINER

GRAY, LINDA LAMEY

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/034,353

Applicant(s)

MORMAN, MICHAEL TOD

Examiner

Linda L Gray

Art Unit

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12-28-01 and 4-4-02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-9, 16 and 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-15, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *See Continuation Sheet*.

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1 – 9, 16 and 19 – 21, drawn to a high-stretch laminate, classified in class 428, subclass 138.
  - II. Claims 10 – 15, 17 and 18, drawn to a method of making a high-stretch laminate, classified in class 156, subclass 60.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions Group II, claims 10 – 15, 17 and 18 and Group I, claims 1 – 9, 16 and 19 – 21 are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process such as sending the non-woven web and the elastic film through nip rollers where the roller against the elastic film is heated, causing the film to become tacky and stick to the non-woven web.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. During a telephone conversation with Roland Norris on December 17, 2002 a provisional election was made with traverse to prosecute the invention of the method of making a high-stretch elastic laminate, claims 10 – 15, 17 and 18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1 – 9, 16 and 19 – 21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Continuation of Attachment(s) 6). Other: The declaration filed 4-4-02 has been entered.

**DETAILED ACTION**

**Election/Restrictions**

**1.** Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9, 16, and 19-21, drawn to a high-strength laminate, classified in class 428, subclass 138.
- II. Claims 10-15 and 17-18, drawn to a method of making a high-strength laminate, classified in class 156, subclass 163.

**2.** The inventions are distinct, each from the other because of the following reasons. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process such as sending the non-woven web and the elastic film through nip rollers where the roller against the elastic is heated, causing the film to become tacky and stick to the non-woven web.

**Specification**

**3.** Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following: (1) if a machine or apparatus, its organization and operation; (2) if an article, its method of making; (3) if a chemical compound, its identity and use; (4) if a mixture, its ingredients; and (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

**4.** The abstract of the disclosure is objected to because such does not refer to a method which is the subject matter of the elected claims, MPEP § 608.01(b).

**5.** The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The following title is suggested: Necked Bonded and Stretch Bonded Laminates With Perforated Non-woven And Method Of Making.

**Claim Rejections - 35 USC § 102**

**6.** The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless – (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**7. Claim 10-14 and 17-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Meece et al. (US 2002/0022424 A1).**

**Claims 10 and 18,** Meece et al. teach providing two non-woven webs 20 where webs 20 are also elastic and bonding webs 20 together (para 0086, L 3-6). Note that webs 20 can be pre-perforated (para 0089, L 1-4). Note also in paragraphs 0073 and 0074 that Meece et al. indicates necking webs 20 before bonding. Thus, Meece et al. teach a method of making a high-strength elastic laminate of a necked non-woven web and an elastic film substantially devoid of perforations (claim 10 and 18).



**Claim 11**, webs 20 are spunbonded (para 0043). **Claims 12-13**, since webs 20 are perforated therein then the perforations are considered to be across the web (cross direction and along the web (machine direction). Claim 17, Meece et al. teach using block copolymers for webs 20 (para 0052). Claim 14, webs 20 are perforated before necking (para 0089).

**Claim Rejections - 35 USC § 103**

**8.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.


**9. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meece et al.**


***Claim 15, Meece et al. do not teach necking before perforating***

However, MPEP 2144.04, section 4C indicates that the selection of any order of performing process steps is prima facie obvious in the absence of new or unexpected results, *In re Burhans*, 154 F.2d 690, 69 USPQ 330 (CCPA 1946).

**Conclusion**

**10.** Any inquiry concerning this communication or earlier communications should be directed to Examiner Linda L. Gray at (703) 308-1093, Monday-Friday from 6:30 am to 3:30 pm. The necessary fax numbers are (703) 872-9310 and (703) 872-9311.

llg   
August 18, 2003

  
LINDA GRAY  
PRIMARY EXAMINER